

**VICTIM COMMUNICATIONS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies provisions relating to confidential communications of a victim of a violent act.

**Highlighted Provisions:**

This bill:

- ▶ modifies and enacts definitions;
- ▶ expands the circumstances when the communications between a victim and a victim counselor are kept confidential;
- ▶ establishes the circumstances when the communications between a victim and a government victim advocate are kept confidential;
- ▶ requires certain notices by a government victim advocate;
- ▶ addresses the scope of the part; and
- ▶ makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-38-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**77-38-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**77-38-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**77-38-204**, as last amended by Laws of Utah 2017, Chapter 188

**78B-1-137**, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

**77-38-202.5**, Utah Code Annotated 1953

**77-38-205**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **77-38-201** is amended to read:

**Part 2. Confidential Communications of Victims of Violent Acts**

**77-38-201. Title.**

This part is known ~~[and cited]~~ as the "Confidential Communications ~~[for Sexual Assault Act]~~ of Victims of Violent Acts."

Section 2. Section **77-38-202** is amended to read:

**77-38-202. Purpose.**

It is the purpose of this ~~[act]~~ part to enhance and promote the mental, physical, and emotional recovery of victims of ~~[sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed]~~ violent acts by restricting the circumstances under which communications may be disclosed.

Section 3. Section **77-38-202.5** is enacted to read:

**77-38-202.5. Scope of part.**

This part governs the disclosure of communications to a victim counselor or government victim advocate notwithstanding that the communication is given to a certified advocate under Title 53B, Chapter 28, Part 2, Confidential Communications for Institutional Advocacy Services Act.

Section 4. Section **77-38-203** is amended to read:

**77-38-203. Definitions.**

As used in this part:

(1) "Communication" means the giving of information by a victim to a victim counselor or government victim advocate, and includes a record created or maintained as a result of providing the information.

~~[(1)]~~ (2) "Confidential communication" means [information] a communication:

(a) given to a ~~[sexual assault]~~ victim counselor by a victim ~~[and includes reports or working papers made in the course of the counseling relationship.]~~ in the course of the relationship between the victim or the victim's family and the victim counselor that is confidential as provided in Section 77-38-204; or

(b) given to a government victim advocate by a victim in the course of the relationship

between the victim or the victim's family and the government victim advocate that is confidential under Section 77-38-205.

~~[(2)] (3) ["Rape crisis"]~~ "Crisis center" means [any office, institution, or center assisting victims of sexual assault and their families which offers] a private entity that provides to a victim or the victim's family crisis intervention, medical services, [and] legal services, [and] or counseling.

~~[(3)] "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.]~~

(4) "Government victim advocate" means an individual who:

(a) is employed by or volunteers for a prosecutor or law enforcement agency to assist a victim of a violent act; and

(b) has as the individual's primary responsibility providing guidance to a victim concerning crisis intervention, medical services, legal services, or counseling.

(5) "Record" means a book, letter, document, paper, map, plan, photograph, file, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.

~~[(4)] (6)~~ "Victim" means [a person who has experienced a sexual assault of whatever nature including incest and rape] an individual who experiences a violent act and requests or receives counseling or assistance from a crisis center or government victim advocate regarding the mental, physical, [and] or emotional consequences of the [sexual assault] violent act.

(7) "Victim counselor" means an individual who is employed by or volunteers at a crisis center who:

(a) completes a minimum of 40 hours of training in counseling and assisting a victim; and

(b) is under the supervision of the director or designee of the crisis center.

(8) "Violent act" means one of the following committed or threatened to be committed:

(a) an offense against a person under Title 76, Chapter 5, Offenses Against the Person, including stalking as defined in Section 76-5-106.5;

(b) domestic violence as defined in Section 77-36-1; or

(c) dating violence as defined in Section 78B-7-402.

Section 5. Section **77-38-204** is amended to read:

**77-38-204. Disclosure of confidential communications given to a victim counselor.**

~~[Notwithstanding Title 53B, Chapter 28, Part 2, Confidential Communications for~~  
~~Institutional Advocacy Services Act, the confidential]~~ A communication between a victim [and  
~~a sexual assault counselor is]~~ counselor and a victim is confidential and available to a third  
person only ~~[when]~~ if:

(1) the victim is a minor and the victim counselor believes it is in the best interest of  
the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to  
disclosure of the confidential communication to a third ~~[party]~~ person based upon  
representations made by the counselor that it is in the best interest of the minor victim to make  
~~[such]~~ the disclosure;

(3) the victim is not a minor, has given consent, and the victim counselor believes the  
disclosure is necessary to accomplish the desired result of counseling; or

(4) the victim counselor has an obligation under Title 62A, Chapter 4a, Child and  
Family Services, to report information transmitted in the confidential communication.

Section 6. Section **77-38-205** is enacted to read:

**77-38-205. Disclosure of confidential communications given to a government  
victim advocate.**

(1) A communication between a government victim advocate and a victim is a  
confidential communication and available to a third person only if:

(a) the communication would be available to a third person under Section 77-38-204 if  
the communication were between a victim counselor and a victim;

(b) the third person to which the communication is provided is the prosecutor or law  
enforcement agency with which the government victim advocate is employed or volunteers; or

(c) a court determines, after in camera review, that the probative value of the  
communication outweighs the prejudicial effect on:

(i) the victim;

(ii) the relationship between the government victim advocate and the victim; or

(iii) the services provided to the victim by the government victim advocate.

(2) A government victim advocate, as soon as reasonably possible, shall notify a victim:

(a) that communications with the government victim advocate may be disclosed to a third person as provided in Subsection (1); and

(b) of the name and location of one or more crisis centers that are near the primary residence of the victim.

Section 7. Section **78B-1-137** is amended to read:

**78B-1-137. Witnesses -- Privileged communications.**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician or surgeon cannot, without the consent of the patient, be examined in a

157 civil action as to any information acquired in attending the patient which was necessary to  
158 enable the physician or surgeon to prescribe or act for the patient. However, this privilege shall  
159 be waived by the patient in an action in which the patient places the patient's medical condition  
160 at issue as an element or factor of the claim or defense. Under those circumstances, a physician  
161 or surgeon who has prescribed for or treated that patient for the medical condition at issue may  
162 provide information, interviews, reports, records, statements, memoranda, or other data relating  
163 to the patient's medical condition and treatment which are placed at issue.

164 (5) A public officer cannot be examined as to communications made in official  
165 confidence when the public interests would suffer by the disclosure.

166 (6) (a) A ~~[sexual assault]~~ victim counselor as defined in Section 77-38-203 cannot,  
167 without the consent of the victim, be examined in a civil or criminal proceeding as to any  
168 confidential communication as defined in Section 77-38-203 made by the victim.

169 (b) A government victim advocate as defined in Section 77-38-203 cannot, without the  
170 consent of the victim, be examined in a civil or criminal proceeding as to a communication that  
171 under Section 77-38-205 is a confidential communication.